

**SUPREME COURT - NASSAU COUNTY-IAS PART 49**  
**PART RULES & PROCEDURES (revised 4/19/12)**

Justice: **Hon. Stacy D. Bennett**

Law Clerk: **Lisa M. Burke**

Secretary: **Danielle Esposito**

Part Clerk: **Deidre Richardson**

Phone: (516) 493-3436

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**I. ADJOURNMENTS**

**A. Motions and Status Conferences:**

1. Applications to adjourn conferences or motions on consent must be received by Chambers via facsimile by **2:00 p.m.** on the business day prior to the conference date or return date of the motion.

If the application is based on counsel's actual engagement on another matter, an Affirmation of Actual Engagement, in conformity with 22 NYCRR Part 125, must accompany the Request for Adjournment Form.

The Attorney for the Child(ren) shall be notified of all adjournment requests and must, likewise, consent thereto.

If the application is granted, a letter confirming same shall be faxed to chambers and all other parties, the same day the application is granted.

2. Letters confirming adjournments shall state that the Court has adjourned the conference or motion on consent of the parties to the specified date, and shall contain the full names of both parties, the index number, a notation indicating the current date the matter is on the Court's calendar and that all parties have been simultaneously copied.

3. Adjournment requests which are left on the Chamber's voice mail shall be disregarded.
4. Adjournments of motions and conferences may be granted if there is **consent of all parties and prior approval of the Court**. No adjournments will be granted without the approval of the Court. If all parties do not consent to the adjournment, an application shall be made by conference call, with all counsel, **no later than 3:00 p.m.** of the day preceding the scheduled conference or the motion. No requests for an adjournment will be entertained without all parties participating in the conference call. Except for applications made in court, upon approval of the adjournment, a letter must immediately be submitted by fax to Chambers confirming same with a copy to all counsel appearing in the matter.
5. Adjournments of motions and conferences may only be sought through **Chambers**. Potential dates, convenient to all parties must be available at the time the adjournment is sought.

**B. Preliminary Conference:**

1. Adjournments of the Preliminary Conference will not be granted, absent a compelling reason for same. Counsel are directed to review the provisions of 22 NYCRR § 202.16 (f) concerning conferences.
2. In addition to scheduling a Certification Conference as part of the Preliminary Conference Order, the Court may direct that a pre-trial conference also be held at the time of the Certification Conference in which event, the rules concerning pretrial conferences, as hereinafter set forth, shall be applicable.
3. Discovery deadlines, Certification deadlines and Note of Issue deadlines, will be enforced. Deadlines may not be extended, absent prior approval by the Court.

## II. MOTIONS

### A. Pre-Motion Conferences:

1. Prior to making or filing any motions, counsel for the moving party is urged to communicate with the Court in writing and arrange for a conference call to be held with his/her adversary and the Court to discuss the issues involved and the possible resolutions thereof. The Attorney for the Child(ren) shall also be notified and included in such conference calls. Counsel fully familiar with the matter and with authority to bind their clients should be available to participate in the conference.
2. If the matter cannot be resolved, the Court will set a briefing schedule for the motion which shall be "So Ordered."
3. This rule does not apply to applications for counsel to be relieved.

### B. Submission of the Motion:

1. All motions shall be marked "submitted" on the return date.
2. Appearances of all **counsel and parties** are not required on all motion return dates, unless counsel requests a conference.
3. All exhibits must be clearly tabbed; motions not consistent with this rule will be rejected and returned to counsel.
4. Motions are to be served and filed in conformity with CPLR §2214.
5. No sur-reply, affidavit, affirmation, memorandum of law or letter will be accepted or considered by the Court without leave of the Court.
6. The Court will determine, after submission, whether oral argument is warranted. Upon such determination, counsel for all

parties will be contacted and advised of the new adjourned date for purposes of oral argument.

7. All motions seeking *pendente lite* relief, pursuant to the new mandatory maintenance guidelines effective October 13, 2010, should include a completed temporary maintenance guidelines worksheet, utilizing each party's gross income for the most recent tax year after FICA/Medicare taxes have been deducted.
8. Any motion seeking an award of counsel fees must be supported by a detailed affirmation of services.

**C. Application for a Stay or Temporary Restraining Order:**

1. Any Order to Show Cause seeking **any** injunctive relief, including a stay or TRO, must be made in accordance with 22 NYCRR 202.7(f). The moving party shall advise the Court as soon as practicable of counsel's intent to make such application.
2. Requests to continue or vacate a stay or TRO beyond the return date of the motion shall be made on the call of the motion calendar. Failure to apply for such extension shall result in the automatic vacatur of the stay or TRO, unless the Order to Show Cause provides otherwise.
3. An "Emergency" Order to Show Cause requires a special affidavit based upon personal knowledge and an affirmation explaining in detail the nature of the emergency. In addition to the foregoing, the movant should be prepared to appear in Court and to make a record before the Court, if the Court requires the same.

**D. Interim Partial or Full Settlement:**

If all or part of a submitted motion is settled, counsel shall forward the original stipulation of settlement to the Court. Such stipulation shall be accompanied by a letter setting forth the date the motion was submitted, what aspects of the motion have been settled and what issues remain to be decided. If the motion is

resolved in its' entirety, the movant shall indicate same. If the motion is resolved, in whole or part, on the record, counsel shall obtain such transcript so that same can be "so ordered", unless the Court otherwise directs.

### **III. COURT APPEARANCES**

- A. All Court appearances, unless otherwise specified or directed by the Court, shall be scheduled for 9:30 a.m. for preliminary, compliance, status, and pre-trial conferences. Counsel may request that the conference be scheduled for 11:00 a.m. or 2:00 p.m.
- B. Attorneys and Pro Se litigants must alert the Court Officer or Court Clerk of their presence and complete a sign-in sheet. If counsel must also appear before another Judge, counsel must advise the Part Clerk or Court Officer where counsel can be reached. All counsel and litigants are directed to appear for each and every conference (including preliminary, status and compliance conferences).
- C. All parties and attorneys, are required to appear at all scheduled dates, unless otherwise directed by the Court.
- D. All conferences will be held in the order in which **all** attorneys and parties have checked in.

### **IV. COMMUNICATION WITH CHAMBERS**

- A. In all communications with chambers by letter, the title of the action, full names of the parties, date matter is next on the Court's calendar and index number shall be set forth, with copies simultaneously delivered to all counsel. *Ex parte* written communications will be disregarded.
- B. Copies of correspondence between counsel shall not be sent to the Court. Such copies shall be disregarded and not placed in the Court's file.
- C. No out of Court settlement will be recognized or accepted unless

counsel submits a letter, on notice to opposing counsel, and, if applicable, the Attorney for the Child(ren), submitting the executed settlement agreement/stipulation or certifying that such agreement/stipulation has, in fact, been executed.

- D. The Court will not accept ex parte telephone communications on substantive issues.

## **V. SANCTIONS**

The Court will not consider a sanctions application, unless the moving party first seeks withdrawal or discontinuation of the offending act or action or demands required or necessary action which is refused. Proof of such request must be made a part of the sanctions application.

## **VI. TRIAL RULES: APPLICABLE TO ALL TRIALS AND HEARINGS**

- A. A Note of Issue and Certificate of Readiness are to be filed within 30 days after certification, unless otherwise instructed by the Court. A statement of Proposed Disposition shall be filed with proof of service along with the Note of Issue. 22 NYCRR § 202.16 (h)
- B. After a matter has been certified as trial-ready, the Court may set a date for a Pre-Trial Conference. Pre-Trial Conferences will be scheduled approximately 30 days prior to the trial date. Counsel with knowledge of the case and the parties must attend.

There will be no adjournments without the Court's consent. At the Pre-Trial Conference, the Court shall provide for the submission or scheduling of the following, to the extent not previously ordered:

- 1. *In limine* applications must be on notice to all parties, returnable at least 10 days prior to the first scheduled trial date.

2. Annotated Statements of Proposed Disposition, in which all of the criteria listed in the statute are provided, and counsel's position stated as to each such criteria for both equitable distribution and maintenance issues.
3. Evaluations: In the event there are any valuations of a business interest or increased earning capacity, a cash flow chart shall be submitted by each side, listing counsel's proposal for payment thereof, as well as any other payments claimed due (such as payor's obligations for maintenance, child support, income taxes, etc.).
4. Exhibits: Counsel for the parties shall consult prior to the Pre-Trial conference and shall in good faith attempt to agree upon the exhibits that will be offered into evidence without objection. At the Pre-Trial conference date, each side shall then mark its exhibits into evidence as to those to which no objection has been made. All exhibits not consented to shall be marked for identification only. If the trial exhibits are voluminous, counsel shall consult the clerk of the part for guidance. The Court will rule upon the objections to the contested exhibits at the earliest possible time. Exhibits not previously demanded, which are to be used solely for credibility or rebuttal, need not be pre-marked.
5. Trial Notebook: If deemed appropriate by the Court, based upon the facts and circumstances of the particular case, parties shall submit **trial notebooks two (2) weeks prior to trial** with all listed exhibits separately and consecutively tabbed [numbers for Plaintiff and letters for Defendant], with the original documents for the witnesses and a copy for the Court. At the conclusion of the trial all exhibits not received into evidence will be removed from the notebooks and returned to counsel.
6. A list of proposed witnesses for the Court's information must be submitted at least 5 business days prior to trial, the order in which they will testify and the estimated length of their testimony.

7. A list of all expert witnesses, with copies of their reports, must be submitted at least 5 business days prior to trial.
8. Marked pleadings, to be submitted before opening statements, must be submitted at least 5 business days prior to trial.
9. Net worth statements **MUST BE** updated and sworn to within thirty [30] days of the trial date.
10. A statement of stipulated facts. [Parties are encouraged to stipulate to facts and/or exhibits].
11. All trial exhibits, whether stipulated or contested on admissibility, should be **pre-marked by the Court Reporter at least one (1) day prior to trial.**
12. If deposition transcripts are to be utilized, a copy of the witness' deposition transcript should be available to the Court. Counsel for the parties shall consult prior to trial and shall, in good faith, attempt to agree upon the portions of deposition testimony to be offered into evidence without objection. The parties shall delete from the testimony to be read the questions and answers that are irrelevant to the point for which the deposition testimony is offered. Each party shall prepare a list of deposition testimony to be offered to which no objection has been made and a separate list of deposition testimony as to which objections have been made. At least ten days prior to trial, or such other time as the court may set, each party shall submit its' list(s) to the Court and other counsel, together with a copy of the portions of the deposition testimony as to which objection has been made. The Court will rule upon the objections at the earliest possible time, after consultation with counsel.
13. An accounting of any claimed pendente lite arrears, supported by backup documentation.
14. Copies of life insurance polices and medical and dental policies

of insurance in effect as of the date of the commencement of the action and as of the present date.

15. A list of issues to be determined by the Court, including any pretrial motion issues referred to the trial by the Court.
16. Both sides shall have available at least four (4) copies of all exhibits which are expected to be introduced into evidence.
17. Both sides shall have available at least four (4) copies of all deposition transcripts and prior statements which are expected to be read into the record or utilized on cross examination at the trial.
18. Both sides shall have available at least four (4) copies of any and all of the following.
  - (a) relevant orders issued by another court, such as final orders of custody or temporary or permanent orders of protection issued by the Family Court;
  - (b) any order of this Court that referred issues raised in motion practice to the trial of the action;
  - (c) any relevant so-ordered stipulation of this Court, as well as transcripts of stipulations read into the record in open court during the pendency of the action; and
  - (d) any properly executed and acknowledged stipulation or agreement relating to material issues in this action.
19. Counsel are urged to stipulate that any issue relating to an award of counsel and expert fees be resolved by the Court, without testimony, upon the submission of affirmations and other appropriate documentation from counsel.
20. Counsel are required to stipulate in writing to any and all relevant

material facts that are not and should not be in dispute.

21. On the date the trial is scheduled, counsel are expected to be prepared to discuss settlement of all unresolved issues and to have complied with each of the trial rules set forth herein.
22. **On the day before the scheduled trial, counsel are directed to contact the Part Clerk or Chambers to confirm the Court's availability.**
23. Objections should be stated without argument, except to simply state the ground therefore, e.g., hearsay, relevance, etc. If further argument is appropriate, it will be invited by the Court.
24. Post-trial financial summations may be submitted in writing within thirty (30) days of the conclusion of trial. The right to submit a financial summation shall be deemed waived, if not timely submitted to the Court. A copy of each side's summation shall be served on all other parties, simultaneous with filing with the Court.
25. Proposed Judgment and Findings of Fact and Conclusions of Law are to be submitted within thirty (30) days of the conclusion of trial.

## **VII. SUMMATION RULES**

- A. At the conclusion of the trial, both sides, as well as the attorney for the child(ren), if any, may submit a written Trial Summation with respect to all issues to be decided by the Court. Said Summations shall contain the following clearly delineated sections: a) a chronological procedural history of the action, including copies of all relevant orders, written stipulations and transcripts of stipulations placed on the record; b) a recitation of the issues to be determined; c) an in depth summary of the testimony of each witness; d) a summary of the findings of any expert report received in evidence; e) a summary of the exhibits in evidence; f) a detailed recitation of counsel's contentions as to the testimony and

exhibits in evidence; and g) applicable law.

- B. Trial Summations will be marked as Court Exhibits and shall be part of the record.
- C. The date for submission of the Trial Summations will be set by the Court after consultation with all counsel. The right to submit a Trial Summation shall be deemed waived, if not timely submitted to the Court.
- D. A copy of each side's and if applicable, the child's or children's Trial Summation shall be served on all other parties, simultaneous with such filing with the Court.
- E. Responses to the Trial Summations are prohibited and will not be considered.
- F. The Court is to be provided the original and one copy of each Trial Summation as well as a computer disc in Word Perfect or Word format containing the Summation.
- G. Trial Summations shall have a Table of Contents. Failure to provide such Table of Contents will result in the Court not considering such summations.

## **VIII. MISCELLANEOUS**

- A. **CONFERENCES/TRIAL** - If there are any outstanding motions (submitted or pending) at the time of the conference/trial, the Principal Law Clerk and/or Judge must be so informed of same that day; the submission date must be provided by counsel. Copies of such motions should be available to the Court at the time of such conference.
- B. **ATTORNEYS OF RECORD** - Attorneys who have appeared in the matter are to make all appearances until they are relieved by the Court or a Consent to Change Attorney(s) has been filed with Part 49 and with the Clerk of the Court.

- C. **STAFF** - The Court functions through the aid and assistance of the courtroom and Chambers staff. They are expected to treat attorneys, litigants and others in a dignified and civil manner, they are also expected to be treated in a civil and dignified manner.
- D. **ATTORNEY FOR THE CHILD(REN)** - Counsel and the Attorney for the Child(ren) are reminded that the Attorney for the Child(ren) acts in the role of counsel for the child(ren). As such, the Attorney for the Child(ren) are bound by the same ethical and procedural rules as counsel for the parties. Ex-parte communications between the Attorney for the Child(ren) and the Court will not be permitted.
- E. Failure to appear at any scheduled call of the calendar or at any conference may result in a default and/or a dismissal of the action (NYCRR §202.27).
- F. All trials and hearings shall continue day-to-day until completed, subject to the Court's availability.
- G. It is incumbent upon all counsel and parties appearing before this Court to insure they have this Court's current Part Rules and are in compliance with same.
- H. These rules are in addition to the Uniform Rules for New York State Trial Courts and the Local Rules of Court. Failure to comply with any rules or orders of this Court may result in preclusion and/or sanctions without further notice.

**HON. STACY D. BENNETT**  
**REQUEST FOR ADJOURNMENT FORM - Part 49**

**THIS FORM MUST BE FILLED OUT COMPLETELY**  
**INCOMPLETE FORMS WILL BE DISREGARDED**

Case Name: \_\_\_\_\_ Index # \_\_\_\_\_

RJI Date: \_\_\_\_\_ Date Issue Joined: \_\_\_\_\_ Date PC Held: \_\_\_\_\_

Date on Calendar: \_\_\_\_\_ Last Court Appearance: \_\_\_\_\_

Req'd Adj. Dates(At Least 3): 1) \_\_\_\_\_ 2) \_\_\_\_\_ 3) \_\_\_\_\_

Number of prior Adjournment Requests for this Conference: \_\_\_\_\_

**ALL REQUESTS MUST BE ON CONSENT AND ALL REQUESTED**  
**ADJOURN DATES MUST BE CONFIRMED WITH YOUR ADVERSARY**  
**AND ATTORNEY FOR THE CHILD, IF APPLICABLE, PRIOR TO**  
**MAKING THE REQUEST.**

Nature of Conference: \_\_\_\_\_

If Motion, Nature of Relief Sought: \_\_\_\_\_

Reason for Adjournment (Affirmation of Actual Engagement must be attached if applicable):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Discovery Completed (Y/N): \_\_\_ Was N/I filed? \_\_\_ Date N/I to be filed: \_\_\_\_\_

**Contact Info:**

Attorney contacting Court and party he/she represents: \_\_\_\_\_

Person Making Call: \_\_\_\_\_ Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

Adversary's name: \_\_\_\_\_ Phone # \_\_\_\_\_

Fax # \_\_\_\_\_

**ALL REQUESTS MUST BE RECEIVED**  
**VIA FAX (516) 571-0029 BEFORE 2:00 P.M. OF THE BUSINESS DAY**  
**PRIOR TO THE CONFERENCE OR MOTION RETURN DATE**

PLEASE NOTE: THERE ARE NEW PRELIMINARY CONFERENCE AND INFORMATION FORMS THAT ARE **REQUIRED TO BE COMPLETED PRIOR TO THE PRELIMINARY CONFERENCE.**

FOR YOUR CONVENIENCE, PLEASE VISIT THE NASSAU COUNTY MATRIMONIAL CENTER WEBSITE AT:

<http://www.nycourts.gov/courts/10jd/nassau/matrimonial/index.shtml>

AND CLICK ON THE "FORMS" TAB,

**OR**

THE P.C. FORM MAY BE OBTAINED AT:

<http://www.nycourts.gov/courts/10jd/nassau/matrimonial/forms/PC-ORDER-2010.pdf>

AND THE INFORMATION FORM MAY BE OBTAINED AT:

<http://www.nycourts.gov/courts/10jd/nassau/matrimonial/forms/PC-INFO-SHEET-2010.pdf>

**PLEASE HAVE THESE FORMS COMPLETED AND BE PREPARED TO PROVIDE ALL INFORMATION REQUIRED AT YOUR CONFERENCE WITH THE COURT.**